IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Crl.MC.No. 3475 of 2007()

AGAINST THE ORDER DATED 13/11/2007 IN CRMP.4733/07 IN SC.240/2002 of ADDL.SESSIONS COURT (ADHOC)-III, THALASSERY

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PETITIONER: ACCUSED 1 & 14

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1. PARAYI PURUSHU, CHEKKIYULLATHIL HOUSE, CHERUVANCHERRY AMSOM DESOM, KANNUR DISTRICT.

2. N.BALAKRISHNAN, CHATHURAKINARULLA PARAMBATH HOUSE, CHERUVANCHERRY AMSOM DESOM, KANNUR DISTRICT.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3475 of 2007

Dated this the 27th day of November, 2007

O R D E R

Petitioners face indictment in a prosecution for offence punishable, inter alia, under Section 307 I.P.C. A special prosecutor appointed by the Government is in charge of the prosecution. CW 34 cited by the prosecution is a witness who had conducted the initial investigation in the case. Subsequently his successor CW 35 has continued with the investigation. CW 34 is not now available in India, it is submitted. The prosecution therefore wanted to examine CW 35 as a witness to cover the area traversed by the initial Investigating Officer CW 34. Objections were raised against such examination. At that juncture the learned Additional Sessions Judge proceeded to pass Annexure-B order. The petitioners claim to be aggrieved by the said order, where the learned Judge has observed that "I am of the view that there is nothing wrong in bringing out facts in the investigation done by CW 34 by examining his successor CW 35". The learned Judge proceeded to observe that the evidentiary value of such evidence brought out by examining CW 35 is a matter to be considered at a later stage.

2. The counsel prays that powers under Section 482 Cr.P.C may be invoked to quash the said order. The counsel further prays that provisions of Section 311 Cr.P.C may be invoked to insist that CW 34 must be examined as a witness.

3. I am unable to accept the submissions of the learned counsel for the petitioners. It is not the law that where the attendance of a witness cannot be procured without an amount of delay and expenses which under the circumstances of the case appears to the Court to be unreasonable", insistence on examination of such a witness can or ought to be made. Section 32 of the Evidence Act covers the said area. I shall not embark on any detailed discussion. The impugned order is certainly an interlocutory order. The petitioners can raise objections if any against admission of any particular fact before the learned Additional Sessions Judge while the witness is examined. Ruling of such objections will have to be given by the learned Judge. If the petitioners have any grievance against admission of any inadmissible evidence, such objections can of course be raised at later stages of trial/appeal if necessary.

4. This Crl.M.C is, in these circumstances, dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-